IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (LODG.) NO.15115 OF 2005
IN
WRIT PETITION NO.9765 OF 2004

Pam-Pac Machines Pvt. Ltd. ..Petitioner.
Vs.
K. Eshwara Krishnan ..Respondent.

...

Mr.Ram Singh i/b Mr. Rohit Shetty for the Petitioner.
Mr. Saroj Joshi i/b Mr. S.V. Pitre for the Respondent.

...

CORAM: DR.D.Y.CHANDRACHUD, J.

13th April, 2006**.**

P.C. :

1. The Review Petition arises out of an order passed by this Court on 12th April, 2005 in Writ Petition 9765 of 2004. The Petition was directed against an order dated 16th September, 2004 passed by the Trial Court for setting aside a "No Written Statement" order that was passed on 20th April, 2004. The Learned Trial Judge observed that it has not been stated as to when the suit summons have been served and when the period of 90 days has expired. Since the application was filed thereafter, it came to be rejected.

2. When the Petition came up before this Court, the order dated

12th April, 2005 records that even before this Court it was not disclosed as to when the suit summons came to be served. No statement was forthcoming even at the hearing of the Petition. In these circumstances, the Petition came to be dismissed. In the Review Petition, it has been stated that thereafter a search had been carried out at the registered office of the Review Petitioner at Dalamal House, Nariman Point and this revealed that the summons was dated 4th February, 2004 and which was received by the Petitioner on 13th February, 2004. Hence, it was submitted that even if the period of 90 days was computed from the date of service of summons, the period for filing the written statement would have expired on 5th May, 2004. The original suit summons has been produced before the Court. Hence, it has been submitted that the basis on which this Court has passed the order is now rectified by tracing the suit summons and producing it before the Court and the Review Petition may be allowed.

3. There is merit in the submission. This Court has dismissed the Petition since the date on which the suit summons was served was not mentioned in the Petition. Now the suit summons has been produced, it would appear that it was issued on 4th February,

2004 and was served on 13th February, 2004. The period of 90 days had not expired when the 'no Written Statement' order was passed. In the circumstances, the Review Petition is allowed and the order of the Court dated 12th April, 2005 is recalled.